

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34729 (Sub-No. 1)

SAGINAW BAY SOUTHERN RAILWAY COMPANY–ACQUISITION AND OPERATION
EXEMPTION–IN SAGINAW COUNTY, MI

[REQUEST FOR WAIVER OF 49 CFR 1150.42(e)]

Decided: June 19, 2006

On May 26, 2006, Saginaw Bay Southern Railway Company (SBS) filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT), CSXT's contractual right to operate, via trackage rights, over approximately 6.84 miles of rail line owned by Huron & Eastern Railway Company, Inc. (HESR), extending from a point 440 feet northeast of GTW milepost 40.96 along the Zilwaukee Spur at the Saginaw Station to milepost CBE 7.72 at the Paines Station in Saginaw County, MI. SBS seeks a waiver of the requirements of 49 CFR 1150.42(e)¹ to permit the exemption it is seeking in this proceeding to become effective without providing advance notice to employees who may be affected by SBS's planned acquisition of the right to operate over HESR's line and to the national offices of the employees' labor unions.

BACKGROUND

On September 1, 2005, SBS, then a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 67 miles of rail line owned by CSXT in Bay, Saginaw, Genesee, and Midland Counties, MI. Notice was served and published in the Federal Register on September 27, 2005 (70 FR 56525), and the transaction was consummated on October 28, 2005.

On March 16, 2006, HESR filed a petition seeking an order directing SBS to show cause why it should not be required either to seek appropriate regulatory authority for its operations over a line owned by HESR or to cease such operations. According to HESR, when SBS acquired the 67 miles of rail line from CSXT in the above transaction, two of the CSXT line

¹ Under 49 CFR 1150.42(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so."

segments were connected only by trackage rights over a 6.4-mile line owned by HESR running between Mershon and Paines, MI.² HESR alleged that SBS did not seek or obtain authority via assignment or otherwise to acquire or operate the trackage rights.

On March 30, 2006, SBS filed a reply. SBS advised the Board that it first became aware in February 2006 that its agreement with CSXT did not include, but should have included, a reference to certain trackage rights pursuant to an April 2, 1878 agreement between CSXT's and HESR's predecessors. SBS stated that it subsequently reached an agreement with CSXT for the assignment of CSXT's trackage rights. SBS argued that, given the original date of the agreement between CSXT's and HESR's predecessors, the assignment did not require Board approval. In a letter filed on April 13, 2006, HESR revised the relief it sought to an order requiring SBS to obtain authority for its acquisition of trackage rights over the subject line.³

By decision served on May 5, 2006, the Board found that SBS had not obtained proper authority to operate over HESR's line. See Saginaw Bay Southern Railway Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc., STB Finance Docket No. 34729 (STB served May 5, 2006). SBS was directed to file a new notice of exemption to acquire authority to operate over the line under 49 CFR 1150.41 instead of 49 CFR 1150.31, because SBS had become a Class III carrier upon consummation of the related transaction in October 2005.⁴

As directed by the Board, SBS filed a new notice of exemption on May 26, 2006. In its notice, SBS requests waiver of our requirements at 49 CFR 1150.42(e) to permit the exemption to become effective without providing the 60-day advance notice to employees on the affected rail line and to the national offices of the labor unions of those employees. In support of its request, SBS argues that it previously notified all of the CSXT employees of its intended hiring with regard to the October 2005 acquisition and that the instant transaction is merely incidental to that acquisition, as it relates only to trackage rights service over HESR segments used to access the CSXT lines. Thus, SBS contends that there is no purpose to be served by additional labor notification.

² The mileage figure encompassed in SBS's May 26, 2006 notice of exemption is 0.44 miles larger than the 6.4-mile figure cited by HESR because SBS included additional, incidental trackage rights, which were addressed in HESR's petition but were not included in HESR's 6.4-mile figure.

³ By letter dated April 17, 2006, SBS argued that HESR's April 13 filing was procedurally defective and failed to support the merits of HESR's arguments.

⁴ In its petition, HESR also stated that SBS had not assumed CSXT's maintenance and other liability obligations for the line and that HESR would ask the Board to impose conditions on any regulatory approval requiring SBS to do so. The Board explained in its decision that SBS's obligations amounted to a private contractual dispute subject to the terms of the agreement under which CSXT had made the assignment and that the Board was not the proper forum to resolve such a dispute. Rather, such contractual disputes were properly for the courts to decide.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.⁵ The Board takes seriously the requirements of the rule, but here it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted.

While we do not ordinarily grant waivers of the employee advance notice requirements, the record indicates that SBS previously notified all of the affected employees of its intended hiring needs in connection with the transaction that was consummated in October 2005. The current notice of exemption regarding the acquisition and operation of trackage rights appears to be incidental to that transaction. Consequently, there is no need for advance notice here because posting notice would be repetitive and serve no additional purpose. Accordingly, we will grant the waiver request.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. SBS's request for waiver is granted.
2. This decision is effective on its service date.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary

⁵ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902— Advance Notice, 2 S.T.B. 592 (1997).